

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SEAN BENNETT,

Plaintiff,

v.

KALAMAZOO COUNTY
MENTAL HEALTH, *et al.*,

Defendants.

Case No. 5:04-CV-60

Hon. Richard Alan Enslen

ORDER

This matter is before the Court on Plaintiff Sean Bennett's post-judgment Motion for Reconsideration of a January 31, 2007 Order denying recusal under 28 U.S.C. § 144. Oral argument is unnecessary in light of the briefing and earlier record.

Pursuant to Western District of Michigan Local Civil Rule 7.4(a), reconsideration is appropriate only when the movant "demonstrate[s] a palpable defect by which the Court and the parties have been misled . . . [and] that a different disposition must result from the correction thereof." Plaintiff's Motion fails to meet this standard.

Further, Plaintiff argues that the motion denied by the January 31, 2007 Order was not properly deemed a "motion for reconsideration" and given the dictates of 28 U.S.C. § 144, the undersigned's disqualification was mandated by Plaintiff's filing of his section 144 affidavit which questioned the appearance of partiality. Regardless of whether the Court had applied a *de novo* or reconsideration standard, said motion would be denied. Section 144 does not entitle a movant to an automatic disqualification by the filing of an affidavit since that section must be read *in pari materia* with 28 U.S.C. § 455, which requires judicial examination of an affidavit to determine whether

disqualification is warranted. *See Easley v. Univ. of Mich. Bd. of Regents*, 853 F.2d 1351, 1355-56 (6th Cir. 1988) (citing cases). In this case, the disqualification affidavit and motion are based purely upon judicial rulings and the rulings themselves do not provide any basis for disqualification.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Sean Bennett's Motion for Reconsideration (Dkt. No. 194) is **DENIED**.

Dated in Kalamazoo, MI:
April 5, 2007

/s/Richard Alan Enslen
Richard Alan Enslen
Senior United States District Judge